

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROSSALYN MARIE ARMENTA,

Plaintiff,

V.

CAROLYN W. COLVIN<sup>1</sup>,  
Commissioner of Social Security,

**Defendant.**

NO. CV-11-0270-JLQ

**MEMORANDUM OPINION AND  
ORDER RE: MOTIONS FOR  
SUMMARY JUDGMENT**

BEFORE THE COURT are Cross-Motions for Summary Judgment. (ECF Nos. 22, 24). Plaintiff is represented by attorney Maureen Rosette. Defendant is represented by Assistant United States Attorney Pamela DeRusha and Special Assistant United States Attorney Gerald Hill. Plaintiff appeals the final decision of the Commissioner of the Social Security Administration (“Commissioner”) which denied her application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”), after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below, the Commissioner’s decision is Affirmed.

## I. PROCEDURAL BACKGROUND

On January 25, 2008 and May 6, 2008, Plaintiff applied for Disability Insurance Benefits and Supplemental Social Security Income under Titles II and

<sup>1</sup> Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin is substituted for Michael J. Astrue as the Defendant in this suit. No further action is necessary to continue this action by reason of the last sentence of 42 U.S.C. § 405(g).

1 XVI of the Social Security Act (the "Act"), 42 U.S.C. §§ 401–433 and §§  
 2 1381–1383c. (Tr. 178-180). Plaintiff alleged disability with an onset date of  
 3 November 1, 2003, due to osteoarthritis, fibromyalgia, COPD, sleep apnea,  
 4 bursitis, facet disease, bulging disc in lumbar spine, depression and foot problems.  
 5 (Tr. 204). Plaintiff's applications were denied initially on July 17, 2007 and upon  
 6 reconsideration on September 10, 2008. Plaintiff requested a hearing which took  
 7 place on November 19, 2009 before ALJ Robert S. Chester. (Tr. 3-100). On  
 8 January 7, 2010, the ALJ issued a decision finding Plaintiff not disabled. (Tr. 14-  
 9 35). Plaintiff's administrative appeal of the ALJ's decision was denied by the  
 10 Appeals Council (Tr. 1-7), making the ALJ's ruling the "final decision" of the  
 11 Commissioner as that term is defined by 42 U.S.C. § 405(g). On July 21, 2011,  
 12 Plaintiff timely filed the present action challenging the Commissioner's decision.  
 13 (ECF No. 4).

14 Notably, Plaintiff filed previous applications for DIB and SSI benefits on  
 15 March 25, 2005, with the same alleged onset date of November 1, 2003. These  
 16 previous applications were denied initially, on reconsideration, and by the decision  
 17 of an ALJ on October 17, 2007. That decision determined that Plaintiff was able to  
 18 perform light duty work, including her past relevant work as a file clerk and  
 19 cashier. (Tr. 114-125).

## 20 II. JURISDICTION

21 Jurisdiction to review the Commissioner's decision exists pursuant to 42  
 22 U.S.C. §§ 405(g) and 1383(c)(3).

## 23 III. SEQUENTIAL EVALUATION PROCESS

24 The Social Security Act defines "disability" as the "inability to engage in  
 25 any substantial gainful activity by reason of any medically determinable physical  
 26 or mental impairment which can be expected to result in death or which has lasted  
 27 or can be expected to last for a continuous period of not less than twelve months."  
 28 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a claimant

1 shall be determined to be under a disability only if the impairments are of such  
2 severity that the claimant is not only unable to do her previous work but cannot,  
3 considering claimant's age, education and work experiences, engage in any other  
4 substantial gainful work which exists in the national economy. 42 U.S.C. §§  
5 423(d)(2)(A), 1382c(a)(3)(B).

6 The Commissioner has established a five-step sequential evaluation process  
7 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920;  
8 *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987).

9 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R.  
10 §§ 404.1520(b), 416.920(b). If she is, benefits are denied. If she is not, the  
11 decision maker proceeds to Step 2.

12 Step 2: Does the claimant have a medically severe impairment or  
13 combination of impairments? 20 C.F.R. §§ 404.1520(c), 416.920(c). If the  
14 claimant does not have a severe impairment or combination of impairments, the  
15 disability claim is denied. If the impairment is severe, the evaluation proceeds to  
16 the third step.

17 Step 3: Does the claimant's impairment meet or equal one of the listed  
18 impairments acknowledged by the Commissioner to be so severe as to preclude  
19 substantial gainful activity? 20 C.F.R. §§ 404.1520(d), 416.920(d); 20 C.F.R. Pt.  
20 404 Subpt. P App. 1. If the impairment meets or equals one of the listed  
21 impairments, the claimant is conclusively presumed to be disabled. If the  
22 impairment is not one conclusively presumed to be disabling, the evaluation  
23 proceeds to Step 4.

24 Step 4: Does the impairment prevent the claimant from performing work she  
25 has performed in the past? 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant  
26 is able to perform her previous work, she is not disabled. If the claimant cannot  
27 perform this work, the inquiry proceeds to the Fifth and final Step.

28 Step 5: Is the claimant able to perform other work in the national economy in

1 view of her age, education and work experience? 20 C.F.R. §§ 404.1520(f),  
 2 416.920(f).

3 The initial burden of proof rests upon the Plaintiff to establish a prima facie  
 4 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921  
 5 (9th Cir. 1971). The initial burden is met once a claimant establishes that a  
 6 physical or mental impairment prevents her from engaging in her previous  
 7 occupation. The burden then shifts to the Commissioner to show (1) that the  
 8 claimant can perform other substantial gainful activity and (2) that a "significant  
 9 number of jobs exist in the national economy" which claimant can perform. *Kail v.*  
 10 *Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

#### IV. STANDARD OF REVIEW

12 "The [Commissioner's] determination that a claimant is not disabled will be  
 13 upheld if the findings of fact are supported by substantial evidence and the  
 14 [Commissioner] applied the proper legal standards." *Delgado v. Heckler*, 722 F.2d  
 15 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more  
 16 than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir.  
 17 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-  
 18 602 (9th Cir. 1989). "It means such relevant evidence as a reasonable mind might  
 19 accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389,  
 20 401 (1971) (citations omitted). "[S]uch inferences and conclusions as the  
 21 [Commissioner] may reasonably draw from the evidence" will also be upheld.  
 22 *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court  
 23 considers the record as a whole, not just the evidence supporting the decision of the  
 24 Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). This  
 25 court may set aside a denial of benefits only if the basis for denial is not supported  
 26 by substantial evidence or if it is based on legal error. *Thomas v. Barnhart*, 278  
 27 F.3d 947, 954 (9th Cir. 2002). It is the role of the trier of fact, not this court, to  
 28 resolve conflicts in the evidence. *Richardson*, 402 U.S. at 400. If the evidence

1 supports more than one rational interpretation, the court must uphold the decision  
 2 of the ALJ. *Thomas*, 278 F.3d at 954 (9<sup>th</sup> Cir. 2002).

### 3           **V. FACTUAL BACKGROUND**

4           The facts are contained in the medical records, administrative transcript  
 5 (ECF Nos. 10-17)(“Tr.”), and the ALJ’s decision, and are only briefly summarized  
 6 here. Plaintiff was born in 1956 and was 53 years old at the time of the  
 7 administrative hearing. (Tr. 69, 89). She has a high school education and attended  
 8 some college courses, but did not receive a degree. (Tr. 89). She testified she was  
 9 5’4” tall and weighed 262 pounds. Her past work experience includes full time  
 10 employment as an customer service representative for a phone company, a file  
 11 clerk for a drug study company, and convenience store cashier. (Tr. 90-91).  
 12 Plaintiff was last gainfully employed in 2003. (Tr. 90).

### 13           **VI. COMMISSIONER’S FINDINGS**

14           The ALJ found at Step 1 that Plaintiff had not engaged in substantial gainful  
 15 activity since November 1, 2003. (Tr. 19). At Step 2, the ALJ determined that  
 16 Plaintiff has the following severe impairments: degenerative disc disease of the  
 17 lumbar spine, diabetes mellitus (type II), degenerative joint disease of the left  
 18 shoulder, obesity, affective disorder, somatoform disorder, and personality  
 19 disorder. (Tr. 19). The ALJ also found that the following were “non-severe” in  
 20 nature: a 2008 foot injury, right knee pain, headaches, renal insufficiency,  
 21 hyperlipidemia, triggering fingers, asthma, allergies, hypertension,  
 22 gasteresophageal reflux disease, and possible sleep apnea. (Tr. 21). Plaintiff’s  
 23 report of fibromyalgia was determined to be “non-medically determinable.” (Tr.  
 24 21).

25           At Step 3, the ALJ determined that the Plaintiff’s impairments, alone or in  
 26 combination, did not meet or medically equal one of the listed impairments in 20  
 27 CFR Pt. 404 Subpt. P App 1 (Listings).

28           At Step 4, the ALJ determined Plaintiff has the residual functional capacity

1 (“RFC”) to perform light work with the following restrictions: she can only  
2 occasionally stoop, kneel, crouch, crawl and climb ramps or stairs; she cannot  
3 climb ladders, ropes or scaffolds; and she should have only superficial contact with  
4 others. (Tr. 24).

5 The ALJ found Plaintiff's statements regarding the severity of her  
6 impairments not fully credible due, in part, to evidence of non-compliance with  
7 prescribed treatment, both physical therapy and pain medication (Tr. 27). The ALJ  
8 also found that Plaintiff's failure to attend counseling sessions and scheduled  
9 evaluations also detracted from her credibility. As to the severity of Plaintiff's  
10 mental impairments, the ALJ determined her testimony was contradicted by the  
11 medical evidence. Finally, in assessing Plaintiff's credibility, the ALJ also pointed  
12 to evidence in the medical records reflecting upon Plaintiff's focus on qualifying  
13 for disability benefits as “indicative of a mindset of disability rather than actual  
14 disability.” (Tr. 29).

15 During the administrative hearing the vocational expert testified that  
16 Plaintiff's past relevant work as a filing clerk is reflected in the Dictionary of  
17 Occupational Titles (“DOT”) as DOT 206.387-034. (Tr. 106), 1991 WL 671737  
18 (description of “File Clerk I”). The expert then testified, based upon the  
19 hypothetical posed by the ALJ with Plaintiff's RFC, that she could perform her  
20 past relevant work as a file clerk. (Tr. 107). Based on this testimony of the  
21 vocational expert, the ALJ found at Step 4 that Plaintiff was able to perform the  
22 demands of her past relevant work as a filing clerk. (Tr. 30). Accordingly, based  
23 upon the prior adjudicated finding of non-disability and the ALJ's findings, the  
24 ALJ concluded that Plaintiff had not been disabled, as defined by the Social  
25 Security Act, from November 1, 2003 through the date of her decision, January 7,  
26 2010.

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## VI. ISSUES

The issue before the Court in this action for judicial review is whether the ALJ's decision is based on substantial evidence and is free of legal error. Plaintiff seeks reversal of the ALJ's denial of benefits, arguing that:

1) The ALJ committed legal error by failing to provide specific and legitimate reasons for rejecting certain opinions of Frank Rosekrans, Ph.D., Cody Ellefsen, D.O., Fred Lege, A.R.N.P., and Christina Riese<sup>2</sup>, A.R.N.P.; and

2) The assessment of Plaintiff's RFC is not supported by substantial evidence.

## VII. DISCUSSION

### A. Preclusive Effect of Prior Proceeding

On October 17, 2007, in a prior proceeding, an ALJ found that Plaintiff was capable of light duty work and therefore was not disabled from November 1, 2003 to the date of that decision. Final administrative decisions are binding under res judicata, *Miller v. Heckler*, 770 F.2d 845, 848 (9th Cir. 1985), and uncontested prior disability determinations preclude a finding of disability within a previously adjudicated period. *Casey v. Secretary*, 987 F.2d 1230, 1232–33 (6th Cir. 1993). In addition, the ALJ’s earlier decision that Plaintiff could work created a presumption that Plaintiff continued to be able to work after that. *Heckler*, 770 F.2d at 848 (9<sup>th</sup> Cir. 1985).

Although the ALJ in this case considered all of Plaintiff's medical records, the ALJ expressly stated that he was not reopening the prior decision and that his decision covered only the period from October 2007 through the date of his

<sup>2</sup> The court notes that although the ALJ’s decision and the parties’ briefs refer to Ms. “Riese,” typewritten medical records from People’s Clinic suggests her last name is “Riebe” (Tr. 432, 433, 437). To avoiding creating confusion, the court utilizes the spelling used by the parties and the ALJ which likely stems from the more difficult to read handwritten printed name at Tr. 424.

1 decision in this case, January 7, 2010. (Tr. 17-18). The fact that the ALJ  
 2 considered the earlier medical records (but did not necessarily discuss them all) is  
 3 not error, as the ALJ needed to do so in order to determine whether there had been  
 4 a substantial change in Plaintiff's condition since that time.

5 Accordingly, the court rejects Plaintiff's contention that ALJ Chester  
 6 committed legal error in failing to set forth specific and legitimate reasons for  
 7 rejecting "any of the four psychological evaluations completed by Dr. Rosekrans."  
 8 Three of the evaluations were conducted in 2004, 2005, and June 2007, which  
 9 precede the period found by the ALJ to be relevant. The ALJ's failure to make  
 10 specific findings regarding these three earlier evaluations was not error. *Heckler*,  
 11 770 F.2d at 848 (9<sup>th</sup> Cir. 1985).

## 12 **B. Medical Evidence**

13 Plaintiff contends the ALJ improperly rejected the opinions of Plaintiff's  
 14 medical providers. "The ALJ must consider all medical opinion evidence."  
 15 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.2008); 20 C.F.R. §  
 16 404.1527(b); SSR 96-5p, 1996 WL 374183, at \*2 (July 2, 1996). In weighing  
 17 medical source opinions in Social Security cases, the Ninth Circuit distinguishes  
 18 among three types of physicians: (1) treating physicians, who actually treat the  
 19 claimant; (2) examining physicians, who examine but do not treat the claimant; and  
 20 (3) non-examining physicians, who neither treat nor examine the claimant. *Lester*  
 21 v. *Chater*, 81 F.3d 821, 830 (9th Cir.1995). Generally, more weight is given to the  
 22 opinion of a treating physician than to the opinions of non-treating physicians. *Id.*  
 23 Where a treating physician's opinion is uncontradicted, it may be rejected only for  
 24 "clear and convincing" reasons, and where it is contradicted, it may be rejected  
 25 only for "specific and legitimate reasons" supported by substantial evidence in the  
 26 record. *Lester*, 81 F.3d at 830. An ALJ need not accept the opinion of a treating  
 27 physician, "if that opinion is brief, conclusory, and inadequately supported by  
 28 clinical findings" or "by the record as a whole." *Batson v. Comm'r of Soc. Sec.*

1     Admin., 359 F.3d 1190, 1195 (9<sup>th</sup> Cir. 2004); *see also Thomas v. Barnhart*, 278  
 2 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.  
 3 2001).

4                 The opinion of a non-examining physician is not itself substantial evidence  
 5 that justifies the rejection of the opinion of either a treating physician or an  
 6 examining physician. *Id.* at 831. “The opinions of non-treating or non-examining  
 7 physicians may also serve as substantial evidence when the opinions are consistent  
 8 with independent clinical findings or other evidence in the record.” *Thomas*, 278  
 9 F.3d at 957 (2002). Factors that an ALJ may consider when evaluating any medical  
 10 opinion include “the amount of relevant evidence that supports the opinion and the  
 11 quality of the explanation provided; the consistency of the medical opinion with  
 12 the record as a whole; [and] the specialty of the physician providing the opinion.”  
 13 *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Where conflict exists between  
 14 the opinion of a treating physician and an examining physician, the ALJ may not  
 15 reject the opinion of the treating physician without setting forth specific, legitimate  
 16 reasons supported by substantial evidence in the record. *Id.* at 632. “The ALJ can  
 17 ‘meet this burden by setting out a detailed and thorough summary of the facts and  
 18 conflicting clinical evidence, stating his interpretation thereof, and making  
 19 findings.’ ” *Thomas*, 278 F.3d at 957 (*quoting Magallanes v. Bowen*, 881 F.2d 747,  
 20 751 (9th Cir. 1989)).

21                 One specific, legitimate reason for rejecting treating physician's opinion is  
 22 when that opinion is premised on the claimant's subjective complaints, which the  
 23 ALJ had already properly discounted. *See Fair v. Bowen*, 885 F.2d 597, 605 (9th  
 24 Cir. 1989). Where the treating physician's opinion is controverted by a non-treating  
 25 physician's opinion based on independent clinical findings, the non-treating  
 26 physician's opinion may be substantial evidence. *See Thomas*, 278 F.3d at 957  
 27 (*citing Morgan v. Comm'r Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir.1999)). “  
 28 ‘When there is conflicting medical evidence, the [ALJ] must determine credibility

1 and resolve the conflict.' " *Id.* (quoting *Matney*, 981 F.2d at 1019).

2 Opinions of non-treating examining or consulting physicians alone may  
 3 constitute substantial evidence supporting an ALJ's decision when they are  
 4 consistent with other evidence in the record. *See Magallanes*, 881 F.2d at 752  
 5 ("[T]he reports of consultative physicians ... may serve as substantial evidence.");  
 6 *Thomas*, 278 F.3d at 957 ("The opinions of nontreating or non-examining  
 7 physicians may ... serve as substantial evidence when the opinions are consistent  
 8 with independent clinical findings or other evidence in the record."); see also 20  
 9 C.F.R. § 404.1527(e) (stating that the opinions of non-examining physicians  
 10 constitute medical evidence).

11 Physicians' assistants, nurse practitioners, and therapists are medical  
 12 professionals, but they are not "acceptable medical sources" (20 C.F.R. §  
 13 404.1513(a)) under the social security framework. They are considered "other  
 14 sources," 20 C.F.R. § 404.1513(d)(1). The distinction between "other sources" and  
 15 an "acceptable medical source" is important because only an "acceptable medical  
 16 source" may be considered a "treating source." See 20 C.F.R. §§ 404.1502,  
 17 416.902. The regulations provide that, "[i]n addition to evidence from the  
 18 acceptable medical sources" evidence from other sources should be used to "show  
 19 the severity of [a claimant's] impairment(s) and how it affects [the claimant's]  
 20 ability to work." 20 CFR § 404.1513(d). An ALJ may discount testimony from  
 21 these "other sources" if the ALJ "gives reasons germane to each witness for doing  
 22 so." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

23 **1. Frank Rosekrans, Ph. D.**

24 Plaintiff was evaluated at Psychological Services Spokane on four occasions  
 25 after referrals by the state Department of Social and Health Services. On all four  
 26 occasions, Plaintiff was evaluated by mental health counselors Shannon  
 27 Schoonover, MS and Kevin Shearer, MA, LMHC, CRC, who completed a DSHS  
 28 Psychological/Psychiatric Evaluation form and narrative, which were then adopted

1 by Dr. Rosekrans as his own reports. (Tr. 343-349, 333-342, 399-410, 507-519).  
2 Plaintiff contends the ALJ did not set forth specific and legitimate reasons for  
3 rejecting Dr. Rosekrans' June 2, 2008 opinion. In that opinion, Mr. Shearer/Dr.  
4 Rosekrans reached the *same* conclusions they reached in the year 2007: that  
5 Plaintiff would have "moderate" limitations with regard to her ability to 1) learn  
6 new tasks; exercise judgment and make decisions; 2) to perform routine tasks; 3)  
7 relate appropriately to co-workers and supervisors; and 4) interact appropriately in  
8 public contacts. They further found she would have "marked" limitations in the  
9 categories of "ability to respond appropriately and tolerate the pressures and  
10 expectations of a normal work setting," as well as "ability to control physical or  
11 motor movements and maintain appropriate behavior."

12 Plaintiff contends the ALJ's *only* reasons for rejecting Dr. Rosekrans' ~~opinion~~  
13 were the "boilerplate" statement that it was "in significant conflict with the body of  
14 his report and his objective findings during the evaluation"; and the fact that it was  
15 in conflict with the conclusions of the reviewing medical adviser, Dr. Mee.  
16 However, Plaintiff ignores the three paragraphs of discussion included in the ALJ's  
17 opinion at Tr. 23, devoted to comparing the 2008 opinions of Mr. Shearer with the  
18 overall evidence. The ALJ noted that Shearer's assessment of was in "significant  
19 contrast" with Plaintiff's reports in her disability application, which he outlined.  
20 The ALJ then contrasted Mr. Shearer's assessment with the claimant's counseling  
21 records from Spokane Mental Health and from Dr. Ellefsen. Finally, the ALJ  
22 compared his conclusions with Shearer's own observations and findings, as well as  
23 Plaintiff's self-reports. There is no error in the fact that the ALJ noted consistency  
24 between his evaluation of the record with the report of a state agency's reviewing  
25 psychologist, Dr. Mee. Indeed, the consistency of a medical opinion with the  
26 record as a whole is the proper focus of the ALJ's specific and legitimate rejection  
27 of the Shearer/Rosekrans' opinion of Plaintiff's degree of limitation.

28 **2. Cody Ellefsen, D. O.**

1 Plaintiff also alleges the ALJ failed to provide specific and legitimate  
2 reasons for rejecting Dr. Ellefsen's May 2009 opinion regarding Plaintiff's  
3 physical limitations.

4 The record evidences Plaintiff began seeing D. O. Ellefsen as her primary  
5 care physician in February 2008. Between February 2008 and May 2009, she was  
6 seen by Dr. Ellefsen at least nine times, and additionally by other providers at  
7 Family Medicine Spokane, for various physical complaints including ear pain, toe  
8 pain, diabetes, nutrition counseling, and her request for a walker. She complained  
9 of low back pain to Dr. Ellefsen in July 2008 for which she was prescribed  
10 hydrocodone (Tr. 618), but Dr. Ellefsen discontinued all narcotic pain medications  
11 in April 2009 after multiple lab reports revealed no trace of the prescribed pain  
12 medications. On May 6, 2009, Plaintiff was seen by Dr. Tubbs at Family  
13 Medicine Spokane complaining of stomach cramps and low back pain. He noted  
14 that Plaintiff "did not wish to attend physical therapy at this time." (Tr. 781).

15 The next day, on May 7, 2009, Dr. Ellefsen examined Plaintiff for purpose  
16 of completing a DSHS physical evaluation form. Dr. Ellefsen marked that Plaintiff  
17 had "moderate" back and shoulder pain, "mild carpal tunnel," and restricted  
18 mobility (stating "unable to sit for any length of time" and "really any physical  
19 activity exacerbates her pain"). He listed her "overall work level" as "severely  
20 limited," defined on the form as unable to lift 2 pounds or unable to stand and/or  
21 walk. (Tr. 628).

22 Plaintiff contends "the ALJ's only reason for rejecting Dr. Ellefsen's  
23 opinion was that he determined that Ms. Armenta was not taking her pain  
24 medication as prescribed." (ECF No. 23 at 18). However, once again, Plaintiff's  
25 argument ignores the ALJ's explicit discussion. First, the ALJ specifically stated  
26 he did not assign any weight to Dr. Ellefsen's "severely limited" assessment,  
27 because it "does not correspond with a finding that her impairments are mild or  
28 moderate." (Tr. 27). Second, the ALJ noted that other portions of Dr. Ellefsen's

1 DSHS evaluation were also inconsistent with the record. The ALJ noted that the  
2 opinion that she could not sit for any length of time, was contradicted by Plaintiff's  
3 earlier comment to Dr. Ellefsen that she had gained weight because she was sitting  
4 at the computer. Also, the ALJ pointed out that Dr. Ellefsen opinion that  
5 Plaintiff's impairment had begun in 2000 was not supported by the record. Likely  
6 because it seemed apparent that Dr. Ellefsen's assessment stemmed from Plaintiff's  
7 self report that day, the ALJ then commented on Plaintiff's lack of credibility (a  
8 finding not challenged here) due to her drug-seeking behavior addressed by Dr.  
9 Ellefsen and her dismissal from chronic pain counseling group for non-attendance.

10 The ALJ's rejection of Dr. Ellefsen's May 7, 2009 opinion was not as  
11 limited as Plaintiff contends, nor in error.

### 12 **3. Fred Lege, A.R.N.P. and Christina Riese, A.R.N.P.**

13 Plaintiff also contends the ALJ erred by failing to give any reasons for  
14 rejecting the opinions of ARNPs Lege and Riese. On June 27, 2006, Mr. Lege  
15 performed a physical evaluation for the Plaintiff for the Washington State  
16 Department of Social and Health Services. He opined on the form that Plaintiff  
17 would be restricted to sedentary work due to fibromyalgia and hip pain. (Tr. 395)  
18 One year later, ARNP Riese completed a similar form similarly opining Plaintiff  
19 was restricted to sedentary work with frequent position changes and sitting no  
20 more than 15 minutes, due to fibromyalgia and bilateral hip pain. (Tr. 423).

21 Notably, both of these opinions are outside the relevant period which was  
22 being considered by the ALJ. Thus for the reasons set forth above, the ALJ was  
23 not obligated to specifically address them, though the ALJ certainly could consider  
24 them in deciding whether the severity of Plaintiff's condition had worsened since  
25 the Commissioner's October 2007 decision. In fact, the ALJ's decision described  
26 the more recent of the two evaluations (Tr. 25-26) and found that it was  
27 inconsistent with the remainder of the medical evidence. The ALJ noted that even  
28 contemporaneous records from People's Clinic in the same month just prior to

1 Riese's evaluation, and also thereafter, suggested her mobility was not that  
2 restricted. Even if the ALJ would have been required to address these "other  
3 source" opinions, the ALJ gave a germane reason for rejecting them, and thus did  
4 not commit legal error. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

5 Finally, as noted by the Defendant, both evaluations hinged upon an  
6 assumption that Plaintiff suffers from fibromyalgia. However, Plaintiff did not  
7 challenge the ALJ's finding herein that fibromyalgia was not a medically  
8 determinable impairment.

9 The ALJ did not err in rejecting the opinions of Mr. Lege or Ms. Riese.

#### 10 **C. Residual Functional Capacity (RFC)**

11 Plaintiff argues that if Dr. Ellefsen, Dr. Rosekrans, Mr. Lege and Ms.  
12 Riese's opinions are credited, the ALJ's residual functional capacity assessment is  
13 not supported by substantial evidence. However, the court has concluded the ALJ  
14 did not erroneously discredit the disputed portions of these provider's opinions. In  
15 addition, Plaintiff does not argue that there was any error relative to the ALJ's  
16 ultimate conclusions on Plaintiff's credibility or lack thereof.

17 In determining Plaintiff's RFC, the ALJ properly considered the opinions of  
18 state agency physicians Dr. Gentile, Dr. Mee, and Dr. Platter. Although agency  
19 physicians' opinions are not entitled to controlling weight, they are recognized as  
20 highly qualified physicians who are experts in the evaluation of medical issues in  
21 disability claims under the Social Security Act, and their opinions must be  
22 considered as expert opinion evidence from non-examining sources and given  
23 appropriate weight. 20 C.F.R. § 404.1527(f). The ALJ exhaustively reviewed and  
24 recounted all of the medical evidence and witness testimony submitted to him for  
25 consideration. The ALJ appropriately assigned the state agency physicians'  
26 opinions significant weight, as they were consistent with the medical record as a  
27 whole.

28 The ALJ took into account the prior judge's determination that Plaintiff was

1 capable of light work, the medical evidence indicating Plaintiff had full range of  
2 motion, no gait disturbances, her reported level of activity, and that she responded  
3 to treatment of both her mental and physical symptoms – when she opted to  
4 participate in the prescribed treatment.

5 If there is evidence in the record to support the ALJ's conclusion, and the  
6 ALJ applied the correct legal standards, this Court must affirm the ALJ's decision.  
7 It is not this Court's job to reinterpret or re-evaluate the evidence however much a  
8 re-evaluation may reasonably result in a favorable outcome for Plaintiff. See  
9 *Batson v. Barnhart*, 259 F.3d 1190, 1193 (9<sup>th</sup> Cir. 2004)(where evidence is  
10 susceptible to more than one reasonable interpretation, the agency's decision must  
11 be upheld).

12 The Court determines that substantial evidence in the record supports the  
13 ALJ's decision.

14 **VIII. CONCLUSION**

15 For the aforesaid reasons, the Commissioner's decision is affirmed.

16 **IT IS HEREBY ORDERED:**

17 1. Plaintiff's Motion for Summary Judgment (ECF No. 22) is **DENIED**.

18 2. Defendant's Motion for Summary Judgment (ECF No. 24) is

19 **GRANTED.**

20 3. The Clerk is directed to enter Judgment dismissing the Complaint and the  
21 claims therein with prejudice.

22 **IT IS SO ORDERED.** The District Court Executive is directed to file this  
23 Order, enter Judgment as directed above, and close this file.

24 DATED this 18<sup>th</sup> day of February, 2013.

25  
26  
27 s/ Justin L. Quackenbush  
28 JUSTIN L. QUACKENBUSH  
SENIOR UNITED STATES DISTRICT JUDGE